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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/730,459

Filing Date: December 08, 2003

Appellant(s): LEVINE ET AL.

Ronald Santucci
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 1/5/2011 appealing from the Office action mailed 8/5/2010.

(1) Real Party in Interest

The examiner has no comment on the statement, or lack of statement, identifying by name the real party in interest in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The following is a list of claims that are rejected and pending in the application: Claims 1, 2, 4, 6-8, 13, 23, 25-27 and 31-36 are pending and rejected.

(4) Status of Amendments After Final

The examiner has no comment on the appellant's statement of the status of amendments after final rejection contained in the brief.

(5) Summary of Claimed Subject Matter

The examiner has no comment on the summary of claimed subject matter contained in the brief.

(6) Grounds of Rejection to be Reviewed on Appeal

The examiner has no comment on the appellant's statement of the grounds of rejection to be reviewed on appeal. Every ground of rejection set forth in the Office action from which the appeal is taken (as modified by any advisory actions) is being maintained by the examiner.

(7) Claims Appendix

The examiner has no comment on the copy of the appealed claims contained in the Appendix to the appellant's brief.

(8) Evidence Relied Upon

WO 01/25522	NOELLE	4-2001
2002/0160681	NOELLE	10-2002
5,857,497	GAISSER	1-1999
6,074,966	ZLATKUS	6-2000
WO 01/88261	STRANDQVIST	11-2001
3,790,438	LEWIS	2-1974
5,142,752	GREENWAY	9-1992
5,915,422	FAGERHOLM	6-1999
5,883,022	ELSENER	3-1999
3,884,630	SCHWARTZ	5-1975
4,104,814	WHIGHT	8-1978

(9) Grounds of Rejection

The following grounds of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 112

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. **Claims 34 and 36 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement.**

The claims contain subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventors, at the time the application was filed, had possession of the claimed invention. The specification is silent regarding a liquid jet pressure of at least 200 psi.

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. **Claims 1, 2, 4, 6-8, 13, 23, 25-27 and 31-36 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.**

Regarding claims 1, 2, 4, 6-8, 13, 23, 25-27 and 31-36, the limitation wherein the hydroentangling support fabric has the mechanical properties and structural strength to reflect liquid jetted from the hydroentangling apparatus renders the claims indefinite. The “mechanical properties” and “structural strength” required to reflect liquid jetted from a hydroentangling apparatus depends on a plurality of undefined variables. For example, the amount of structural strength required to reflect liquid jets depends on the liquid jet pressure and the exposure time to

the liquid jets. At a lower pressure and/or shorter exposure time little structural strength is required to handle the liquids jets but at a higher pressure and/or a longer exposure time a larger structural strength is required to handle the liquid jets. Therefore, it is unclear what mechanical properties or structural strength is claimed.

Regarding claims 33 and 35, the Markush members render the claims indefinite because each member refers to a property wherein flat filaments are not present without establishing that which is present (undefined variables). It is not clear if all or some or none of the other variables (e.g., materials, weave structure, filament fineness, and/or fabric density) are the same or different for the two comparable scenarios. In addition, the claims fail to positively identify the non-flat shape(s).

Claim Rejections - 35 USC § 102/103

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 1, 2, 4, 6, 13, 23, 25-27, 31 and 33-36 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over WO 01/25522 to Noelle (USPAP 2002/0160681 cited as translation document).

Noelle discloses a hydroentangling apparatus, for the production of a hydroentangled nonwoven product, comprising a water permeable support fabric comprising flat filaments wherein said support fabric is endless (see entire document including Figure 2, [0092] and [0093]).

Regarding the fabric having the mechanical properties and structural strength to reflect liquid jetted from the hydroentangling apparatus, the prior art fabric inherently possesses the claimed characteristics because the fabric structure is substantially identical to the claimed fabric.

The Patent and Trademark Office can require applicants to prove that prior art products do not necessarily or inherently possess characteristics of claimed products where claimed and prior art products are identical or substantially identical, or are produced by identical or substantially identical processes; burden of proof is on applicants where rejection based on inherency under 35 U.S.C. § 102 or on *prima facie* obviousness under 35 U.S.C. § 103, jointly or alternatively, and Patent and Trademark Office's inability to manufacture products or to obtain and compare prior art products evidences fairness of this rejection, *In re Best, Bolton, and Shaw*, 195 USPQ 431 (CCPA 1977).

Regarding claims 2 and 4, flat filaments may be used in one direction while round filaments may be used in the perpendicular direction ([0092]).

Regarding claim 6, flat filaments may be used in both directions ([0038] and [0092]).

Regarding claim 13, the support fabric inherently possesses the claimed permeability [0037].

Regarding claims 25-27 and 31, it is the examiner's position that the article of the applied prior art is identical to or only slightly different than the claimed article. Even though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process. *In re Thorpe*, 227 USPQ 964, 966 (Fed. Cir. 1985). The burden has been shifted to the applicant to show an unobvious difference between the claimed product and the prior art product. *In re Marosi*, 218 USPQ 289 (Fed. Cir. 1983). The applied prior art either anticipated or strongly suggested the claimed subject matter. It is noted that if the applicant intends to rely on Examples in the specification or in a submitted declaration to show non-obviousness, the applicant should clearly state how the Examples of the present invention are commensurate in scope with the claims and how the Comparative Examples are commensurate in scope with the applied prior art.

Regarding claims 33-36, the prior art fabric inherently possesses the claimed characteristics because the fabric structure is substantially identical to the claimed fabric.

8. Claims 23, 25-27, 31, 32, 35 and 36 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over USPN 5,857,497 to Gaisser.

Gaisser discloses a water permeable support fabric comprising rectangular (flat) filaments wherein said support fabric is endless (see entire document including column 1, lines 11-35, column 4, lines 30-39 and column 6, lines 42-50).

Regarding the fabric having the mechanical properties and structural strength to reflect liquid jetted from the hydroentangling apparatus, the prior art fabric inherently possesses the claimed characteristics because the fabric structure is substantially identical to the claimed fabric.

The Patent and Trademark Office can require applicants to prove that prior art products do not necessarily or inherently possess characteristics of claimed products where claimed and prior art products are identical or substantially identical, or are produced by identical or substantially identical processes; burden of proof is on applicants where rejection based on inherency under 35 U.S.C. § 102 or on prima facie obviousness under 35 U.S.C. § 103, jointly or alternatively, and Patent and Trademark Office's inability to manufacture products or to obtain and compare prior art products evidences fairness of this rejection, *In re Best, Bolton, and Shaw*, 195 USPQ 431 (CCPA 1977).

Regarding claims 25-27, 31 and 32, it is the examiner's position that the article of the applied prior art is identical to or only slightly different than the claimed article. Even though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process. *In re Thorpe*, 227 USPQ 964, 966 (Fed. Cir. 1985). The burden has been shifted to the applicant to show an unobvious difference between the claimed product and the prior art product. *In re Marosi*, 218 USPQ 289 (Fed. Cir. 1983). The applied prior art either anticipated or strongly suggested the claimed subject matter. It is noted that if the applicant intends to rely on Examples in the specification or in a submitted declaration to show non-obviousness, the applicant should clearly state how the Examples of the present invention are commensurate in scope with the claims and how the Comparative Examples are commensurate in scope with the applied prior art.

Regarding claim 32, Gaisser discloses that the support fabric is a multilayer weave fabric (paragraph bridging columns 2 and 3).

Regarding claims 35 and 36, the prior art fabric inherently possesses the claimed characteristics because the fabric structure is substantially identical to the claimed fabric.

9. Claims 1, 2, 4, 6, 13, 23, 25-27, 31 and 33-36 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over USPN 6,074,966 to Zlatkus.

Zlatkus discloses a hydroentangling apparatus, for the production of a hydroentangled nonwoven product, comprising a water permeable support fabric comprising flat filaments wherein said support fabric is endless (see entire document including column 2, lines 32-52, column 3, lines 21-29, and the Examples).

Regarding the fabric having the mechanical properties and structural strength to reflect liquid jetted from the hydroentangling apparatus, the prior art fabric inherently possesses the claimed characteristics because the fabric structure is substantially identical to the claimed fabric.

The Patent and Trademark Office can require applicants to prove that prior art products do not necessarily or inherently possess characteristics of claimed products where claimed and prior art products are identical or substantially identical, or are produced by identical or substantially identical processes; burden of proof is on applicants where rejection based on inherency under 35 U.S.C. § 102 or on *prima facie* obviousness under 35 U.S.C. § 103, jointly or alternatively, and Patent and Trademark Office's inability to manufacture products or to obtain and compare prior art products evidences fairness of this rejection, *In re Best, Bolton, and Shaw*, 195 USPQ 431 (CCPA 1977).

Regarding claims 2, 4 and 6, all of the MD and CD filaments are flat filaments.

Regarding claim 13, the support fabric inherently possesses the claimed permeability.

Regarding claims 25-27 and 31, it is the examiner's position that the article of the applied prior art is identical to or only slightly different than the claimed article. Even though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process. *In re Thorpe*, 227 USPQ 964, 966 (Fed. Cir. 1985). The burden has been shifted to the applicant to show an unobvious difference between the claimed product and the prior art product. *In re Marosi*, 218 USPQ 289 (Fed. Cir. 1983). The applied prior art either anticipated or strongly suggested the claimed subject matter. It is noted that if the applicant intends to rely on Examples in the specification or in a submitted declaration to show non-obviousness, the applicant should clearly state how the Examples of the present invention are commensurate in scope with the claims and how the Comparative Examples are commensurate in scope with the applied prior art.

Regarding claims 33-36, the prior art fabric inherently possesses the claimed characteristics because the fabric structure is substantially identical to the claimed fabric.

Claim Rejections - 35 USC § 103

10. Claims 2, 4, 6-8, 13 and 32-36 are rejected under 35 U.S.C. 103(a) as being unpatentable over WO 01/25522 to Noelle (USPAP 2002/0160681 cited as translation document) as applied to claims 1, 2, 4, 6, 13, 23, 25-27, 31 and 33-36 above, and further in view of USPN 5,857,497 to Gaisser.

Noelle does not appear to mention the flat filaments support fabric being a multilayer weave, but Gaisser discloses that it is known in the papermaking apparatus art to use a flat filament support fabric with a multilayer weave to improve stability in the machine direction while maintaining the desired permeability (see entire document including column 1, lines 11-35, column 4, lines 30-39 and column 6, lines 42-50). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to make the flat filament support fabric of Noelle with a multilayer weave, as taught by Gaisser, motivated by a desire to increase structural stability in the machine direction while still affording a high degree of permeability and because it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability and desired characteristics.

Regarding claims 2, 4 and 6, Gaisser discloses that the fabric includes MD filaments and CD filaments (paragraph bridging columns 2 and 3) and that a rectangular shape may be utilized in the MD and/or CD yarns (column 6, lines 41-50).

Regarding claims 7, 8 and 32, Gaisser discloses that the support fabric is a multilayer weave fabric (paragraph bridging columns 2 and 3) and that a rectangular shape may be utilized in the first and/or second layer (column 6, lines 41-50).

11. Claims 1, 2, 4, 6-8, 13, 23, 25-27 and 31-36 are rejected under 35 U.S.C. 103(a) as obvious over USPN 5,857,497 to Gaisser in view of WO 01/88261 to Strandqvist.

Gaisser discloses a support fabric comprising rectangular (flat) filaments wherein said support fabric is endless (see entire document including column 1, lines 11-35, column 4, lines 30-39 and column 6, lines 42-50).

Regarding claims 1, 2, 4, 6-8 and 13, Gaisser discloses using the support fabric in a papermaking apparatus (column 1, lines 11-25), but Gaisser does not mention using the support fabric in a hydroentangling apparatus. Strandqvist discloses that it is known in the hydroentangling apparatus art to use a support fabric from a papermaking apparatus (see entire document including page 4, lines 7-18). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to try using the support fabric of Gaisser in a hydroentangling apparatus, motivated by a desire to construct a functioning hydroentangling apparatus.

A patent claim can be proved obvious merely by showing that the combination of elements was obvious to try. When there is a design need or market pressure to solve a problem and there are a finite number of identified, predictable solutions, a person of ordinary skill has good reason to pursue the known options within his or her technical grasp. If this leads to the anticipated success, it is likely the product is not of innovation but of ordinary skill and common sense. *KSR v. Teleflex*.

Regarding the fabric having the mechanical properties and structural strength to reflect liquid jetted from the hydroentangling apparatus, the prior art fabric inherently possesses the claimed characteristics because the fabric structure is substantially identical to the claimed fabric.

The Patent and Trademark Office can require applicants to prove that prior art products do not necessarily or inherently possess characteristics of claimed products where claimed and prior art products are identical or substantially identical, or are produced by identical or substantially identical processes; burden of proof is on applicants where rejection based on inherency under 35 U.S.C. § 102 or on prima facie obviousness under 35 U.S.C. § 103, jointly or alternatively, and Patent and Trademark Office's inability to manufacture products or to obtain and compare prior art products evidences fairness of this rejection, *In re Best, Bolton, and Shaw*, 195 USPQ 431 (CCPA 1977).

Regarding claims 2, 4 and 6, Gaisser discloses that the fabric includes MD filaments and CD filaments (paragraph bridging columns 2 and 3) and that a rectangular shape may be utilized in the MD and/or CD yarns (column 6, lines 41-50).

Regarding claims 7, 8 and 32, Gaisser discloses that the support fabric is a multilayer weave fabric (paragraph bridging columns 2 and 3) and that a rectangular shape may be utilized in the first and/or second layer (column 6, lines 41-50).

Regarding claim 13, Gaisser discloses that the permeability of the support fabric is greater than 350 cfm (column 4, lines 50-60).

Regarding claims 25-27 and 31, it is the examiner's position that the article of the applied prior art is identical to or only slightly different than the claimed article. Even though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process. *In re Thorpe*, 227 USPQ 964, 966 (Fed. Cir. 1985). The burden has been shifted to the applicant to show an unobvious difference between the claimed product and the prior art product. *In re Marosi*, 218 USPQ 289 (Fed. Cir. 1983). The applied prior art either anticipated or strongly suggested the claimed subject matter. It is noted that if the applicant intends to rely on Examples in the specification or in a submitted declaration to show non-obviousness, the applicant should clearly state how the Examples of the present invention are commensurate in scope with the claims and how the Comparative Examples are commensurate in scope with the applied prior art.

Regarding claims 33-36, the prior art fabric inherently possesses the claimed characteristics because the fabric structure is substantially identical to the claimed fabric.

12. Claims 2, 4, 6-8, 13 and 32-36 are rejected under 35 U.S.C. 103(a) as being unpatentable over USPN 6,074,966 to Zlatkus as applied to claims 1, 2, 4, 6, 13, 23, 25-27, 31 and 33-36 above, and further in view of USPN 5,857,497 to Gaisser.

Zlatkus does not appear to mention the flat filaments support fabric being a multilayer weave, but Gaisser discloses that it is known in the papermaking apparatus art to use a flat filament support fabric with a multilayer weave to improve stability in the machine direction while maintaining the desired permeability (see entire document including column 1, lines 11-35, column 4, lines 30-39 and column 6, lines 42-50). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to make the flat filament support fabric of Zlatkus with a multilayer weave, as taught by Gaisser, motivated by a desire to increase structural stability in the machine direction while still affording a high degree of permeability and because it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability and desired characteristics.

Regarding claims 2, 4 and 6, Gaisser discloses that the fabric includes MD filaments and CD filaments (paragraph bridging columns 2 and 3) and that a rectangular shape may be utilized in the MD and/or CD yarns (column 6, lines 41-50).

Regarding claims 7, 8 and 32, Gaisser discloses that the support fabric is a multilayer weave fabric (paragraph bridging columns 2 and 3) and that a rectangular shape may be utilized in the first and/or second layer (column 6, lines 41-50).

13. Claims 1, 2, 4, 6, 13, 23, 25-27 and 31-36 are rejected under 35 U.S.C. 103(a) as obvious over WO 01/88261 to Strandqvist in view of USPN 3,790,438 to Lewis.

Strandqvist discloses a hydroentangling apparatus comprising an endless water permeable hydroentangling support member, for the production of a hydroentangled nonwoven product, wherein the support member comprises a polymeric screen with reinforcement filaments (14) (see entire document including the Figures, page 1, lines 4-5, page 3, lines 13-25, and page 5, lines 4-11).

Strandqvist illustrates round reinforcement filaments (14) but does not appear to mention the use of flat reinforcement filaments. Lewis discloses that it is known in the art to reinforce polymeric compositions with flat reinforcement filaments (see Background of the invention section column 1, lines 5-55). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to substitute the round reinforcement filament shape of Standqvist with the flat shape taught by Lewis, motivated by a desire to provide substantial biaxial reinforcement to the polymeric screen and/or because it is within the general skill of a worker in the art to select a known shape on the basis of its suitability and desired characteristics.

Regarding the fabric having the mechanical properties and structural strength to reflect liquid jetted from the hydroentangling apparatus, the prior art fabric inherently possesses the claimed characteristics because the fabric structure is substantially identical to the claimed fabric.

The Patent and Trademark Office can require applicants to prove that prior art products do not necessarily or inherently possess characteristics of claimed products where claimed and prior art products are identical or substantially identical, or are produced by identical or substantially identical processes; burden of proof is on applicants where rejection based on inherency under 35 U.S.C. § 102 or on prima facie obviousness under 35 U.S.C. § 103, jointly or alternatively, and Patent and Trademark Office's inability to manufacture products or to obtain and compare prior art products evidences fairness of this rejection, *In re Best, Bolton, and Shaw*, 195 USPQ 431 (CCPA 1977).

Regarding claims 2, 4 and 6, all of the MD and CD filaments are flat filaments.

Regarding claim 13, the support fabric inherently possesses the claimed permeability.

Regarding claims 25-27 and 31, it is the examiner's position that the article of the applied prior art is identical to or only slightly different than the claimed article. Even though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process. *In re Thorpe*, 227 USPQ 964, 966 (Fed. Cir. 1985). The burden has been shifted to the applicant to show an unobvious difference between the claimed product and the prior art product. *In re Marosi*, 218 USPQ 289 (Fed. Cir. 1983). The applied prior art either anticipated or strongly suggested the claimed subject matter. It is noted that if the applicant intends to rely on Examples in the specification or in a submitted declaration to show non-obviousness, the applicant should clearly state how the Examples of the present invention are

commensurate in scope with the claims and how the Comparative Examples are commensurate in scope with the applied prior art.

Regarding claim 32, the support fabric includes a plurality of layers (Figure 3).

Regarding claims 33-36, the prior art fabric inherently possesses the claimed characteristics because the fabric structure is substantially identical to the claimed fabric.

14. Claims 1, 2, 4, 6, 13, 23, 25-27, 31 and 33-36 are rejected under 35 U.S.C. 103(a) as being unpatentable over USPN 5,142,752 to Greenway in view of any one of WO 01/25522 to Noelle (USPAP 2002/0160681 cited as translation document), USPN 6,074,966 to Zlatkus, or USPN 5,915,422 to Fagerholm.

Greenway discloses an endless hydroentangling support fabric (belt) in a hydroentangling apparatus for the production of a hydroentangled nonwoven product (see entire document including column 4, lines 33-46 and Figure 1). Greenway discloses the use of a support fabric with round filaments (Table I), but Greenway is silent with regards to the use of flat filaments.

Noelle discloses that it is known in the hydroentangling support fabric art to use flat filaments to obtain the desired nonwoven appearance (see entire document including [0038], [0092] and [0093]). Zlatkus discloses that it is known in the hydroentangling support fabric art to use flat filaments to assist in producing different textures or patterns as desirable for the intended application (see entire document including column 2, lines 32-52, column 3, lines 21-29, and the Examples). Fagerholm discloses that it is known in the belt art (column 1, lines 5-16) to use a support fabric comprising flat filaments to decrease support fabric thickness and/or increase wear potential (see Background Art section column 1, line 19 through column 2, line

58). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to substitute the round filaments of Greenway with the flat filaments taught by the prior art, motivated by a desire to control texture or pattern, decrease thickness, and/or increase wear potential and because it is within the general skill of a worker in the art to select a known filament shape on the basis of its suitability and desired characteristics.

The substitution of known equivalent structures involves only ordinary skill in the art. *In re Fout* 213 USPQ 532 (CCPA 1982); *In re Susi* 169 USPQ 423 (CCPA 1971); *In re Siebentritt* 152 USPQ 618 (CCPA 1967); *In re Ruff* 118 USPQ 343 (CCPA 1958). When a patent claims a structure already known in the prior art that is altered by the mere substitution of one element for another known in the field, the combination must do more than yield a predictable result. *KSR v. Teleflex*.

Regarding the fabric having the mechanical properties and structural strength to reflect liquid jetted from the hydroentangling apparatus, the prior art fabric inherently possesses the claimed characteristics because the fabric structure is substantially identical to the claimed fabric.

The Patent and Trademark Office can require applicants to prove that prior art products do not necessarily or inherently possess characteristics of claimed products where claimed and prior art products are identical or substantially identical, or are produced by identical or substantially identical processes; burden of proof is on applicants where rejection based on inherency under 35 U.S.C. § 102 or on *prima facie* obviousness under 35 U.S.C. § 103, jointly or alternatively, and Patent and Trademark Office's inability to manufacture products or to

obtain and compare prior art products evidences fairness of this rejection, *In re Best, Bolton, and Shaw*, 195 USPQ 431 (CCPA 1977).

Regarding claims 2, 4 and 6, Greenway discloses that the filaments are present in the MD and CD direction (Table 1). Greenway discloses that round filaments are known in the art while Noelle, Zlatkus, and Fagerholm each disclose that flat filaments are known in the art. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to place the round and/or flat filaments in the MD and/or CD direction based on the desired support fabric thickness and/or wear potential.

Regarding claim 13, Greenway discloses that the void areas are 35% or more (column 6, lines 25-43). Therefore, Greenway inherently teaches that the permeability of the support fabric is greater than 350 cfm.

Regarding claims 25-27 and 31, it is the examiner's position that the article of the applied prior art is identical to or only slightly different than the claimed article. Even though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process. *In re Thorpe*, 227 USPQ 964, 966 (Fed. Cir. 1985). The burden has been shifted to the applicant to show an unobvious difference between the claimed product and the prior art product. *In re Marosi*, 218 USPQ 289 (Fed. Cir. 1983). The applied prior art either anticipated or strongly suggested the claimed subject matter. It is noted that if the applicant intends to rely on Examples in the specification or in a submitted declaration to show non-

obviousness, the applicant should clearly state how the Examples of the present invention are commensurate in scope with the claims and how the Comparative Examples are commensurate in scope with the applied prior art.

Regarding claims 33-36, the prior art fabric inherently possesses the claimed characteristics because the fabric structure is substantially identical to the claimed fabric.

15. Claims 2, 4, 6-8, 13 and 32-36 are rejected under 35 U.S.C. 103(a) as being unpatentable over USPN 5,142,752 to Greenway in view of any one of WO 01/25522 to Noelle (USPAP 2002/0160681 cited as translation document), USPN 6,074,966 to Zlatkus, or USPN 5,915,422 to Fagerholm as applied to claims 1, 2, 4, 6, 13, 23, 25-27, 31 and 33-36 above, and further in view of USPN 5,857,497 to Gaisser.

Greenway does not appear to mention the flat filaments support fabric being a multilayer weave, but Gaisser discloses that it is known in the papermaking apparatus art to use a flat filament support fabric with a multilayer weave to improve stability in the machine direction while maintaining the desired permeability (see entire document including column 1, lines 11-35, column 4, lines 30-39 and column 6, lines 42-50). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to make the flat filament support fabric of Greenway with a multilayer weave, as taught by Gaisser, motivated by a desire to increase structural stability in the machine direction while still affording a high degree of permeability and because it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability and desired characteristics.

Regarding claims 2, 4 and 6, Gaisser discloses that the fabric includes MD filaments and CD filaments (paragraph bridging columns 2 and 3) and that a rectangular shape may be utilized in the MD and/or CD yarns (column 6, lines 41-50).

Regarding claims 7, 8 and 32, Gaisser discloses that the support fabric is a multilayer weave fabric (paragraph bridging columns 2 and 3) and that a rectangular shape may be utilized in the first and/or second layer (column 6, lines 41-50).

16. Claims 23, 25-27, 31, 35 and 36 are rejected under 35 U.S.C. 103(a) as being unpatentable over USPN 5,883,022 to Elsener in view of any one of USPN 3,884,630 to Schwartz or USPN 4,104,814 to Whight.

Elsener discloses a fabric comprising flat filaments (see entire document including column 3, lines 40-47). Elsener discloses that the fabric is preferably a roller hand towel (column 3, lines 56-62). Elsener does not appear to specifically disclose that the roller hand towel is in a continuous loop or made endless, but Schwartz and Whight each disclose that it is known in the roller hand towel art to use an endless fabric (see entire documents including column 1, lines 4-23 and column 2, lines 43-45 of Schwartz and column 1, lines 4-45 of Whight). It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the fabric in any suitable shape, such as an endless fabric, because it is within the general skill of a worker in the art to select a known shape on the basis of its suitability and desired characteristics.

Regarding the fabric having the mechanical properties and structural strength to reflect liquid jetted from the hydroentangling apparatus, the prior art fabric inherently possesses the claimed characteristics because the fabric structure is substantially identical to the claimed fabric.

The Patent and Trademark Office can require applicants to prove that prior art products do not necessarily or inherently possess characteristics of claimed products where claimed and prior art products are identical or substantially identical, or are produced by identical or substantially identical processes; burden of proof is on applicants where rejection based on inherency under 35 U.S.C. § 102 or on prima facie obviousness under 35 U.S.C. § 103, jointly or alternatively, and Patent and Trademark Office's inability to manufacture products or to obtain and compare prior art products evidences fairness of this rejection, *In re Best, Bolton, and Shaw*, 195 USPQ 431 (CCPA 1977).

Regarding claims 25-27 and 31, it is the examiner's position that the article of the applied prior art is identical to or only slightly different than the claimed article. Even though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process. *In re Thorpe*, 227 USPQ 964, 966 (Fed. Cir. 1985). The burden has been shifted to the applicant to show an unobvious difference between the claimed product and the prior art product. *In re Marosi*, 218 USPQ 289 (Fed. Cir. 1983). The applied prior art either anticipated or strongly suggested the claimed subject matter. It is noted that if the applicant

intends to rely on Examples in the specification or in a submitted declaration to show non-obviousness, the applicant should clearly state how the Examples of the present invention are commensurate in scope with the claims and how the Comparative Examples are commensurate in scope with the applied prior art.

Regarding claims 35 and 36, the prior art fabric inherently possesses the claimed characteristics because the fabric structure is substantially identical to the claimed fabric.

(10) Response to Argument

Claims 34 and 36 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement.

The specification is silent regarding a liquid jet pressure of at least 200 psi.

The appellant asserts that it is known in the art to use the claimed pressure of “at least 200 psi” because the current specification incorporates by reference a United States patent that in turn refers to a Canadian patent which discloses that it is known in the art to use a pressure of 200 to 2000 psi. The appellant asserts that this Canadian patent disclosure proves that it is common knowledge in the art to use the claimed pressure. Appellant’s argument is not persuasive. Firstly, although it may have been a known option to use the claimed pressure of at least 200 psi, there is no evidence that the liquid jetted from the claimed invention was at a pressure of at least 200 psi. Secondly, the limitation of “at least 200 psi” does not meet the written description requirement because the phrase “at least” has no upper limit and causes the claims to read on embodiments outside the broadest range disclosed in the Canadian patent. In re Wertheim, 541 F. 2d 257, 191 USPQ 90 (CCPA 1976).

Claims 1, 2, 4, 6-8, 13, 23, 25-27 and 31-36 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The “mechanical properties” and “structural strength” required to reflect liquid jetted from a hydroentangling apparatus depends on a plurality of undefined variables (undefined in the claims and in the specification). For example, the amount of structural strength required to reflect liquid jets depends on the liquid jet pressure and the exposure time to the liquid jets. At a lower pressure and/or shorter exposure time little structural strength is required to handle the liquids jets but at a higher pressure and/or a longer exposure time a larger structural strength is required to handle the liquid jets. Therefore, it is unclear what mechanical properties or structural strength is claimed.

The appellant asserts that the current claims are definite because the specification of a Canadian patent discloses it is known in the art to use a pressure of 200 to 3000 psi and a total energy of 0.10 to 2.0 hp-hr/lb. Appellant’s argument is not persuasive because although it may have been known to use a specific pressure and a specific total energy and a specific time, said features are not recited in the rejected claims. For example, independent claims 1 and 23 do not state that the liquid jetted from the apparatus is at 200 psi.

The limitation is tantamount to a claim drawn to a car with “mechanical properties and structural strength” to protect the life of a driver in a crash. This limitation renders the claim indefinite because a specific crash is not specified. Is the crash at 5 mph or 60 mph? Is the driver wearing a seatbelt? Is the crash head-on or is it from the rear or the side? These are just a

few variables necessary to render the claim definite. A car involved in a fender bender clearly requires much less structural strength than a car involved in a head-on collision at 60 mph.

Regarding claims 33 and 35, the Markush members render the claims indefinite because each member refers to a property wherein flat filaments are not present without establishing that which is present (undefined variables). It is not clear if all or some or none of the other variables (e.g., materials, weave structure, filament fineness, and/or fabric density) are the same or different for the two comparable scenarios. The variables are undefined in the claims and in the specification. In addition, the claims fail to positively identify the non-flat shape(s).

For example, one claimed property is “a weave thickness T’ that is smaller than a thickness T, wherein T represents a thickness without said flat filaments.” It is not clear what T’ thickness is being claimed because the comparable T thickness is not sufficiently defined. Although the claim limitation establishes that the comparable weave does not include flat filaments, the limitation fails to positively recite the structure of the comparable weave. For example, the limitation fails to establish the cross-sectional shape of the filaments of the comparable weave or the weave structure or weave density of the comparable weave or the fineness of the filaments of the comparable weave.

The limitation is tantamount to a claim drawn to a car comprising a V6 engine wherein the car has a top speed of T’ that is greater than a speed T, wherein T represents the top speed of a car without a V6 engine. This limitation renders the claim indefinite because a specific comparable car is not specified. Is the other engine a V4 or a V8? What are the weights of the cars? These are just a few variables necessary to render the claim definite. A brand new V8 Ferrari clearly has a higher top speed than a 1976 V4 Pinto.

Claims 1, 2, 4, 6, 13, 23, 25-27, 31 and 33-36 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over WO 01/25522 to Noelle (USPAP 2002/0160681 cited as translation document).

The appellant asserts that the covering fabric of Noelle is not a "support fabric." The examiner respectfully disagrees. The covering fabric of Noelle supports an overlying web of fibers while water jets are projected onto the web ([0092] and [0093]). The appellant asserts that the covering fabric is not a supporting fabric merely because the covering fabric is positioned over a cylinder. The appellant asserts that the cylinder supports the web of fibers rather than the covering fabric. The examiner respectfully disagrees.

Firstly, the covering fabric clearly supports the web of fibers because the web of fibers remains positioned over the covering fabric (see Figures). Appellant's argument is tantamount to asserting that the rubber tires of a car are not "supporting" tires because the tires are supported by the cylindrical metal wheels of the car. Secondly, appellant's "support fabric" is also supported by cylinders as shown in Figure 3 and described on page 7, lines 19-27. Thirdly, a recitation of the intended use of the claimed invention (as a support) must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. Since Noelle clearly discloses that the fabric withstands liquid jetted from a hydroentangling apparatus and that the fabric is in a continuous loop or made endless, it is inherently capable of being used as a support.

The appellant asserts that Noelle fails to teach or suggest the alleged "unexpected advantages" of flat filaments. The appellant asserts that the mechanical and structural properties of claims 33 and 35 positively recite these "unexpected advantages." The examiner respectfully disagrees. Firstly, the claims are rejected under 35 U.S.C. 102(b). A result cannot be found unexpected when the attributing feature is anticipated by the applied art. Secondly, although the results may be preferred results, there is no evidence that they are unexpected. The appellant provides no evidence that any of the properties listed in claims 33 and 35 are unexpected to any degree. The appellant certainly fails to provide evidence that the results are sufficiently unexpected to overcome obviousness. Appellants have the burden of establishing that results are unexpected and significant. See MPEP 716.02(b).

For example, page 9, lines 5-28 of the specification mentions the use of flat filaments to make a fabric thinner but said disclosure does not even suggest that this is unexpected. On the contrary, said disclosure references Figures 1 and 2 wherein a fabric with round filaments is compared to a fabric with flat filaments. Firstly, these drawings are not commensurate in scope with the current claims because claims 33 and 35 fail to assert that the comparable fabric has round filaments. Secondly, the thickness of the flat filaments of Figure 2 is thinner than the thickness of the round filaments of Figure 1 thus resulting in the alleged "unexpected result" of a thinner fabric. This result isn't even unexpected to one of no skill in any art.

Evidence relied upon must establish that the differences in results are in fact unexpected and unobvious and of both statistical and practical significance. *Ex parte Gelles*, 22 USPQ2d 1318, 1319 (Bd. Pat. App. & Inter. 1992) (Mere conclusions in appellants' brief that the claimed polymer had an unexpectedly increased impact strength "are not entitled to the weight of conclusions accompanying the evidence, either in the specification or in a declaration."); *Ex parte C*, 27 USPQ2d 1492 (Bd. Pat. App. & Inter. 1992) (Applicant alleged unexpected results with regard to the claimed soybean plant, however there was no basis for judging the practical significance of data with regard to maturity date, flowering date, flower color, or height of the plant.). See also *In re Nolan*, 553 F.2d 1261, 1267, 193 USPQ 641, 645 (CCPA 1977) and *In re Eli Lilly*, 902 F.2d 943, 14 USPQ2d 1741 (Fed. Cir. 1990).

Claims 23, 25-27, 31, 32, 35 and 36 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over USPN 5,857,497 to Gaisser.

The appellant fails to traverse the ground of rejection. Therefore, the rejections should be sustained.

Claims 1, 2, 4, 6, 13, 23, 25-27, 31 and 33-36 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over USPN 6,074,966 to Zlatkus.

The appellant asserts that Zlatkus fails to teach or suggest the claimed fabric because the filaments allegedly do not have a flat cross-sectional shape. Appellant's argument is not persuasive.

Firstly, it is noted that the feature upon which appellant relies (i.e. filaments have a flat cross-sectional shape) is not recited in the rejected claims. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Secondly, the claims are to be given their broadest most reasonable interpretation in view of the specification. The current specification discloses that one method that may be used to produce the claimed flat filaments is to calender one or both sides of a fabric to produce flat areas (page 12, line 4 through page 13, line 3). Therefore, the current specification teaches that the broadest most reasonable interpretation of "flat filaments" is filaments that comprise flat areas. Zlatkus discloses a variety of hydroentangling backing wires including a high knuckle wire, a medium knuckle wire, and a flat wire (Figure 1). It is noted that the flat wire backing is not called a small knuckle wire. Rather, it is called a "flat wire." Therefore, the wires are not merely woven with a small knuckle, but are actually woven with a flat knuckle. Considering that a wire comprising flat knuckles inherently possesses flat areas (flat knuckle areas), the flat wire of Zlatkus inherently comprises the claimed flat filaments.

Claims 2, 4, 6-8, 13 and 32-36 are rejected under 35 U.S.C. 103(a) as being unpatentable over WO 01/25522 to Noelle (USPAP 2002/0160681 cited as translation document) as applied to claims 1, 2, 4, 6, 13, 23, 25-27, 31 and 33-36 above, and further in view of USPN 5,857,497 to Gaißer.

The appellant fails to traverse the ground of rejection. Therefore, the rejections should be sustained.

Claims 1, 2, 4, 6-8, 13, 23, 25-27 and 31-36 are rejected under 35 U.S.C. 103(a) as obvious over USPN 5,857,497 to Gaisser in view of WO 01/88261 to Strandqvist.

The appellant asserts that there is no motivation to use the fabric in a hydroentangling apparatus. The examiner respectfully disagrees. Gaisser discloses using the support fabric in a papermaking apparatus (column 1, lines 11-25), but Gaisser does not mention using the support fabric in a hydroentangling apparatus. Strandqvist discloses that it is known in the hydroentangling apparatus art to use a support fabric from a papermaking apparatus (see entire document including page 4, lines 7-18). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to try using the support fabric of Gaisser in a hydroentangling apparatus, motivated by a desire to construct a functioning hydroentangling apparatus.

A patent claim can be proved obvious merely by showing that the combination of elements was obvious to try. When there is a design need or market pressure to solve a problem and there are a finite number of identified, predictable solutions, a person of ordinary skill has good reason to pursue the known options within his or her technical grasp. If this leads to the anticipated success, it is likely the product is not of innovation but of ordinary skill and common sense. *KSR v. Teleflex*.

The appellant asserts that Gaisser teaches away from the combination because Gaisser discloses that some prior art press felts are inadequate for use as a dryer felt. Appellant's argument is not persuasive because the current rejection does not teach or suggest using a press felt as a dryer felt. Rather, the current rejection teaches that it would have been obvious to use the felt of Gaisser as a support fabric in a hydroentangling apparatus.

The appellant asserts that Gaisser fails to teach or suggest the alleged "unexpected advantages" of flat filaments. The appellant asserts that the mechanical and structural properties of claims 33 and 35 positively recite these "unexpected advantages." The examiner respectfully disagrees. Although the results may be preferred results, there is no evidence that they are unexpected. The appellant provides no evidence that any of the properties listed in claims 33 and 35 are unexpected to any degree. The appellant certainly fails to provide evidence that the results are sufficiently unexpected to overcome obviousness. Appellants have the burden of establishing that results are unexpected and significant. See MPEP 716.02(b).

For example, page 9, lines 5-28 of the specification mentions the use of flat filaments to make a fabric thinner but said disclosure does not even suggest that this is unexpected. On the contrary, said disclosure references Figures 1 and 2 wherein a fabric with round filaments is compared to a fabric with flat filaments. Firstly, these drawings are not commensurate in scope with the current claims because claims 33 and 35 fail to assert that the comparable fabric has round filaments. Secondly, the thickness of the flat filaments of Figure 2 is thinner than the thickness of the round filaments of Figure 1 thus resulting in the alleged "unexpected result" of a thinner fabric. This result isn't even unexpected to one of no skill in any art.

Evidence relied upon must establish that the differences in results are in fact unexpected and unobvious and of both statistical and practical significance. *Ex parte Gelles*, 22 USPQ2d 1318, 1319 (Bd. Pat. App. & Inter. 1992) (Mere conclusions in appellants' brief that the claimed polymer had an unexpectedly increased impact strength "are not entitled to the weight of conclusions accompanying the evidence, either in the specification or in a declaration."); *Ex parte C*, 27 USPQ2d 1492 (Bd. Pat. App. & Inter. 1992) (Applicant alleged unexpected results with regard to the claimed soybean plant, however there was no basis for judging the practical significance of data with regard to maturity date, flowering date, flower color, or height of the plant.). See also *In re Nolan*, 553 F.2d 1261, 1267, 193 USPQ 641, 645 (CCPA 1977) and *In re Eli Lilly*, 902 F.2d 943, 14 USPQ2d 1741 (Fed. Cir. 1990).

Claims 2, 4, 6-8, 13 and 32-36 are rejected under 35 U.S.C. 103(a) as being unpatentable over USPN 6,074,966 to Zlatkus as applied to claims 1, 2, 4, 6, 13, 23, 25-27, 31 and 33-36 above, and further in view of USPN 5,857,497 to Gaisser.

The appellant fails to traverse the ground of rejection. Therefore, the rejections should be sustained.

Claims 1, 2, 4, 6, 13, 23, 25-27 and 31-36 are rejected under 35 U.S.C. 103(a) as obvious over WO 01/88261 to Strandqvist in view of USPN 3,790,438 to Lewis.

The appellant asserts that Lewis fails to teach or suggest flat filaments. The examiner respectfully disagrees. Lewis discloses that the invention pertains to fibers with a rectangular cross-section (column 1, lines 5-8).

The appellant asserts that the applied prior art fails to teach or suggest the alleged "unexpected advantages" of flat filaments. The appellant asserts that the mechanical and structural properties of claims 33 and 35 positively recite these "unexpected advantages." The examiner respectfully disagrees. Although the results may be preferred results, there is no evidence that they are unexpected. The appellant provides no evidence that any of the properties listed in claims 33 and 35 are unexpected to any degree. The appellant certainly fails to provide evidence that the results are sufficiently unexpected to overcome obviousness. Appellants have the burden of establishing that results are unexpected and significant. See MPEP 716.02(b).

For example, page 9, lines 5-28 of the specification mentions the use of flat filaments to make a fabric thinner but said disclosure does not even suggest that this is unexpected. On the contrary, said disclosure references Figures 1 and 2 wherein a fabric with round filaments is compared to a fabric with flat filaments. Firstly, these drawings are not commensurate in scope with the current claims because claims 33 and 35 fail to assert that the comparable fabric has round filaments. Secondly, the thickness of the flat filaments of Figure 2 is thinner than the thickness of the round filaments of Figure 1 thus resulting in the alleged "unexpected result" of a thinner fabric. This result isn't even unexpected to one of no skill in any art.

Evidence relied upon must establish that the differences in results are in fact unexpected and unobvious and of both statistical and practical significance. *Ex parte Gelles*, 22 USPQ2d 1318, 1319 (Bd. Pat. App. & Inter. 1992) (Mere conclusions in appellants' brief that the claimed polymer had an unexpectedly increased impact strength "are not entitled to the weight of conclusions accompanying the evidence, either in the specification or in a declaration."); *Ex parte C*, 27 USPQ2d 1492 (Bd. Pat. App. & Inter. 1992) (Applicant alleged unexpected results with regard to the claimed soybean plant, however there was no basis for judging the practical significance of data with regard to maturity date, flowering date, flower color, or height of the plant.). See also *In re Nolan*, 553 F.2d 1261, 1267, 193 USPQ 641, 645 (CCPA 1977) and *In re Eli Lilly*, 902 F.2d 943, 14 USPQ2d 1741 (Fed. Cir. 1990).

Claims 1, 2, 4, 6, 13, 23, 25-27, 31 and 33-36 are rejected under 35 U.S.C. 103(a) as being unpatentable over USPN 5,142,752 to Greenway in view of any one of WO 01/25522 to Noelle (USPAP 2002/0160681 cited as translation document), USPN 6,074,966 to Zlatkus, or USPN 5,915,422 to Fagerholm.

The appellant asserts that there is no motivation to combine the references. The examiner respectfully disagrees. Greenway is silent with regards to the use of flat filaments, but Noelle discloses that it is known in the hydroentangling support fabric art to use flat filaments to obtain the desired nonwoven appearance (see entire document including [0038], [0092] and [0093]), Zlatkus discloses that it is known in the hydroentangling support fabric art to use flat filaments to assist in producing different textures or patterns as desirable for the intended application (see entire document including column 2, lines 32-52, column 3, lines 21-29, and the Examples), and

Fagerholm discloses that it is known in the belt art (column 1, lines 5-16) to use a support fabric comprising flat filaments to decrease support fabric thickness and/or increase wear potential (see Background Art section column 1, line 19 through column 2, line 58). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to substitute the round filaments of Greenway with the flat filaments taught by the prior art, motivated by a desire to control texture or pattern, decrease thickness, and/or increase wear potential and because it is within the general skill of a worker in the art to select a known filament shape on the basis of its suitability and desired characteristics.

The appellant asserts that the applied prior art fails to teach or suggest the alleged "unexpected advantages" of flat filaments. The appellant asserts that the mechanical and structural properties of claims 33 and 35 positively recite these "unexpected advantages." The examiner respectfully disagrees. Although the results may be preferred results, there is no evidence that they are unexpected. The appellant provides no evidence that any of the properties listed in claims 33 and 35 are unexpected to any degree. The appellant certainly fails to provide evidence that the results are sufficiently unexpected to overcome obviousness. Appellants have the burden of establishing that results are unexpected and significant. See MPEP 716.02(b).

For example, page 9, lines 5-28 of the specification mentions the use of flat filaments to make a fabric thinner but said disclosure does not even suggest that this is unexpected. On the contrary, said disclosure references Figures 1 and 2 wherein a fabric with round filaments is compared to a fabric with flat filaments. Firstly, these drawings are not commensurate in scope with the current claims because claims 33 and 35 fail to assert that the comparable fabric has round filaments. Secondly, the thickness of the flat filaments of Figure 2 is thinner than the

thickness of the round filaments of Figure 1 thus resulting in the alleged "unexpected result" of a thinner fabric. This result isn't even unexpected to one of no skill in any art.

Evidence relied upon must establish that the differences in results are in fact unexpected and unobvious and of both statistical and practical significance. *Ex parte Gelles*, 22 USPQ2d 1318, 1319 (Bd. Pat. App. & Inter. 1992) (Mere conclusions in appellants' brief that the claimed polymer had an unexpectedly increased impact strength "are not entitled to the weight of conclusions accompanying the evidence, either in the specification or in a declaration."); *Ex parte C*, 27 USPQ2d 1492 (Bd. Pat. App. & Inter. 1992) (Applicant alleged unexpected results with regard to the claimed soybean plant, however there was no basis for judging the practical significance of data with regard to maturity date, flowering date, flower color, or height of the plant.). See also *In re Nolan*, 553 F.2d 1261, 1267, 193 USPQ 641, 645 (CCPA 1977) and *In re Eli Lilly*, 902 F.2d 943, 14 USPQ2d 1741 (Fed. Cir. 1990).

Claims 2, 4, 6-8, 13 and 32-36 are rejected under 35 U.S.C. 103(a) as being unpatentable over USPN 5,142,752 to Greenway in view of any one of WO 01/25522 to Noelle (USPAP 2002/0160681 cited as translation document), USPN 6,074,966 to Zlatkus, or USPN 5,915,422 to Fagerholm as applied to claims 1, 2, 4, 6, 13, 23, 25-27, 31 and 33-36 above, and further in view of USPN 5,857,497 to Gaisser.

The appellant fails to traverse the ground of rejection. Therefore, the rejections should be sustained.

Claims 23, 25-27, 31, 35 and 36 are rejected under 35 U.S.C. 103(a) as being unpatentable over USPN 5,883,022 to Elsener in view of any one of USPN 3,884,630 to Schwartz or USPN 4,104,814 to Whight.

The appellant asserts that the fabric of Elsener is non-analogous to the claimed hydroentangling support fabric. The examiner respectfully disagrees. The current specification discloses that a hydroentangling support fabric is merely a fabric that is capable of being used to support a fiber web while water jets entangle the supported fibers (page 3, line 25 through page 4, line 13). Therefore, if it can be shown that the fabric of Elsener is capable of being used as claimed, then the references are clearly analogous.

The appellant asserts that the support fabric taught by the applied prior art could not withstand pressures of between 200 and 2000 psi. Appellant's argument is not persuasive. Firstly, with the exception of claims 34 and 36, the feature upon which appellant relies is not recited in the rejected claims. Secondly, the limitations of claims 34 and 36 are new matter. Thirdly, a liquid jet exposure time is not specified in any claim and therefore all of the claims are indefinite as explained above. Fourthly, the fabrics are substantially identical in terms of structure and the appellant fails to provide sufficient evidence that the fabric cannot withstand the claimed pressure.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

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